Laimbeer Packaging Company, LLC *and* Local 6-1001, Pace International Union, AFL–CIO *and* Local 6-0421, Pace International Union, AFL–CIO. Cases 7–CA–44736 and 7–CA–45174

May 30, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

The General Counsel seeks a default judgment in this case on the ground that the Respondent has withdrawn its answer and is not contesting the allegations of the amended consolidated complaint. Upon charges filed by Local 6-1001, Pace International Union, AFL–CIO (Charging Union 6-1001) and Local 6-0421, Pace International Union, AFL–CIO (Charging Union 6-0421) (collectively the Unions), on January 15 and May 31, 2002, the General Counsel issued an amended consolidated complaint on August 30, 2002, against Laimbeer Packaging Company, LLC (the Respondent), alleging that it has violated Section 8(a)(1) and (5) of the Act.

The Respondent filed an answer and amended answer to the original complaint in Case 7–CA–44736. However, on September 5, 2002, after issuance of the amended consolidated complaint, the Respondent filed a withdrawal of answer, stating that it does not contest the allegations in the amended consolidated complaint.

On October 1, 2002, the General Counsel filed a Motion for Default Judgment with the Board. On October 3, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the amended consolidated complaint affirmatively states that unless an answer is filed within 14 days of service, all the allegations in the amended consolidated complaint will be considered admitted. Although the Respondent answered the original and amended complaints in Case 7–CA–44736, it subsequently withdrew its answer, stating that it did not contest the allegations in the amended consolidated complaint. The withdrawal of an answer has the same effect as a failure to file an answer, i.e., the allegations in the amended consolidated complaint must be considered to be true.[1]

Accordingly, we grant the General Counsel's Motion for Default Judgment.[2]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business at 25445 W. Outer Drive, Melvindale, Michigan, and a place of business at 1409 E. Pierson Road, Flint, Michigan (the Respondent's Melvindale and Flint facilities, respectively), has been engaged in the manufacture, nonretail sale, and distribution of corrugated boxes. The Respondent's Melvindale and Flint facilities are both involved in this proceeding. During the calendar year ending December 31, 2001, the Respondent, in conducting its business operations described above, received gross revenues in excess of $500,000, and purchased and received at its Melvindale and Flint, Michigan facilities goods valued in excess of $50,000 directly from points outside the State of Michigan.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Unions are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

> Unit 1: All full-time and regular part-time production and maintenance employees employed by the Respondent at its Melvindale facility; but excluding office clerical employees, sales employees, technical employees, professional employees, guards and supervisors as defined in the Act.
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> Unit 2: All full-time and regular part-time production and maintenance employees employed by the Respondent at its Flint facility; but excluding office clerical employees, sales employees, technical

[1] See *Maislin Transport*, 274 NLRB 529 (1985).

[2] The allegations in the Motion for Default Judgment disclose that on June 5, 2002, the Respondent filed an Involuntary Petition for Bankruptcy with the United States Bankruptcy Court in Michigan-Detroit. It is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. *Phoenix Co.*, 274 NLRB 995 (1985). Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See id., and cases cited therein. Accord: *NLRB v. Continental Hagen Corp.*, 932 F.2d 828, 834–835 (9th Cir. 1991).

employees, professional employees, guards and supervisors as defined in the Act.

At all material times, Charging Union 6-1001 has been the designated exclusive collective-bargaining representative of unit 1 and has been recognized as the representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement effective from April 1, 1994, through March 31, 2004.

At all material times, Charging Union 6-0421 has been the designated exclusive collective-bargaining representative of unit 2 and has been recognized as the representative by the Respondent. This recognition has been embodied in an agreement effective from January 6, 1997, through December 31, 2001.

At all material times, based on Section 9(a) of the Act, the Charging Unions have been the respective exclusive collective-bargaining representatives of units 1 and 2.

The collective-bargaining agreements described above provide, inter alia, for holiday pay, vacation pay, sickness and accident benefits, and union-security and dues checkoff.

About December 11, 2001, the Respondent laid off the majority of unit 1 employees and announced that it would close the Melvindale facility shortly afterwards. About the same date, the Respondent closed its Flint place of business and terminated its unit 2 employees.

Since about December 11, 2001, and continuing to date, the Respondent failed to continue in effect all the terms and conditions of the collective-bargaining agreements described above by failing to pay, inter alia, holiday pay, vacation pay, and sickness and accident benefits.

Since about December 2001, the Respondent has failed to forward to the Charging Unions the dues deducted from the paychecks of employees in the two units.

The Respondent engaged in all of the conduct described above without the Charging Unions' consent and without affording the Charging Unions notice or a meaningful opportunity to bargain with the Respondent with respect to the effects of its actions. The subjects described above are mandatory subjects for collective bargaining.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representatives of its employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, to remedy the Respondent's unlawful failure and refusal to bargain with the Unions about the effects of the Respondent's decision to close its Melvindale and Flint facilities and layoff or terminate unit employees, we shall order the Respondent to bargain with the Unions, on request, about the effects of those decisions. Because of the Respondent's unlawful conduct, however, the laid-off and terminated employees in units 1 and 2 have been denied an opportunity to bargain through their collective-bargaining representative. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Unions. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to ensure that meaningful bargaining occurs and to effectuate the policies of the Act, to accompany our Order with a limited backpay requirement designed to make whole the employees for losses suffered as a result of the violations and to re-create in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the laid-off and terminated employees in a manner similar to that required in *Transmarine Navigation Corp*., 170 NLRB 389 (1968),[3] as clarified by *Melody Toyota*, 325 NLRB 846 (1998).

Thus, the Respondent shall pay its laid-off and terminated employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Unions on those subjects pertaining to the effects of the closing of its facility on its employees; (2) a bona fide impasse in bargaining; (3) the Unions' failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 days after receipt days of the Respondent's notice of its desire to bargain with the Unions; or (4) the Unions' subsequent failure to bargain in good faith.

In no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which they were laid off or terminated to the time they secured equivalent employment elsewhere, or

[3] See also *Live Oak Skilled Care & Manor*, 300 NLRB 1040 (1990).

the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner. However, in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the laid-off or terminated employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, having found that the Respondent violated Section 8(a)(5) and (1) since December 11, 2001, by failing and refusing to continue in effect all the terms and conditions of the collective-bargaining agreement by failing to pay, inter alia, holiday pay, vacation pay, and sickness and accident benefits on behalf of its employees in units 1 and 2, we shall order the Respondent to make whole its unit employees for any loss of earnings and other benefits they have suffered as a result. In addition, we shall order the Respondent to make all contractually required benefit fund contributions that have not been made since that date, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 6 (1979). The Respondent shall also reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981).[4] All payments to the unit employees shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra.[5]

Further, having found that the Respondent has failed since December 2001, to remit to the Unions the dues deducted from the paychecks of employees in the two units, we shall order the Respondent to forward such withheld dues to the Unions as required by the April 1, 1994—March 31, 2004 and January 6, 1997—December 31, 2001 collective-bargaining agreements, with interest as prescribed in *New Horizons for the Retarded*, supra.

Finally, in view of the fact that the Respondent's Flint facility is closed, and that the Respondent announced its intention to close the Melvindale facility, we shall order the Respondent to mail a copy of the attached notice to the Unions and to the last known addresses of the unit employees who were employed by the Respondent when it closed or announced the closure of its Flint and Melvindale facilities on December 11, 2001, in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, Laimbeer Packaging Company, LLC, Melvindale and Flint, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Local 6-1001, Pace International Union, AFL–CIO and Local 6-0421, Pace International Union, AFL–CIO, as the respective exclusive collective-bargaining representatives for the units described below, concerning the effects on the unit employees of its decision to close its Melvindale and Flint, Michigan facilities, and the resulting layoff and termination of the unit employees. The units are:

> Unit 1: All full-time and regular part-time production and maintenance employees employed by the Respondent at its Melvindale facility; but excluding office clerical employees, sales employees, technical employees, professional employees, guards and supervisors as defined in the Act.
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> Unit 2: All full-time and regular part-time production and maintenance employees employed by the Respondent at its Flint facility; but excluding office clerical employees, sales employees, technical employees, professional employees, guards and supervisors as defined in the Act.

[4] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such delinquency will constitute a setoff to the amount that the Respondent otherwise owes the fund.

[5] Inasmuch as the Flint facility was closed on the same date as the Respondent ceased paying contractually required benefits (December 11, 2001), the Respondent shall only be required to make whole the employees at that facility and the funds for benefits that had accrued prior to the date of closure. It is unclear from the complaint, however, whether the Respondent's Melvindale facility closed on December 11, 2001, or sometime thereafter. The complaint alleges only that the Respondent laid off a majority of its employees at that facility on December 11, 2001, and announced that the facility would be closed shortly afterwards. With respect to those employees at the Melvindale facility who were laid off on December 11, 2001, the Respondent's obligation to make whole the employees and the funds shall be the same as at the Flint facility, i.e., the Respondent's obligation shall be limited to paying benefits and making benefit fund contributions that had accrued before the layoff. However, as to unit employees, if any, who continued to be employed at the Melvindale facility after December 11, 2001, the Respondent's obligation to make whole those employees and the funds would continue during the term of the April 1, 1994—March 30, 2004 agreement and thereafter, absent a new agreement or impasse, until such time as the employees were laid off or the facility closed.

(b) Failing to continue in effect all the terms and conditions of its collective-bargaining agreements with the Unions by failing to pay, inter alia, holiday pay, vacation pay, and sickness and accident benefits.

(c) Failing to remit to the Unions dues that have been deducted from the employees' paychecks pursuant to the terms of the collective-bargaining agreements.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Unions over the effects on employees in units 1 and 2 of its decision to close its Melvindale and Flint, Michigan facilities and lay off and terminate the unit employees, and reduce to writing and sign any agreement reached as a result of such bargaining.

(b) Pay the laid-off or terminated employees in the units described above their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Unions on those subjects pertaining to the effects of the closing of its facility on its employees; (2) a bona fide impasse in bargaining; (3) the Unions' failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 days after receipt of the Respondent's notice of its desire to bargain with the Unions; or (4) the Unions' subsequent failure to bargain in good faith; but in no event shall the sum paid to any of the employees exceed the amount they would have earned as wages from the date on which they were laid off or terminated to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided, however, that in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ, with interest, as set forth in the remedy section of this decision.

(c) Make the employees in units 1 and 2 whole for any loss of earnings or other benefits by paying, inter alia, holiday pay, vacation pay, and sickness and accident benefits pursuant to the collective-bargaining agreements that have not been paid since December 11, 2001, with interest, as described in the remedy section of this decision.

(d) Make all the contractually required benefit fund contributions, if any, that have not been made on behalf of the employees in units 1 and 2 since December 11, 2001, and reimburse unit employees for any expenses ensuing from its failure to make the required contributions, with interest, in the manner set forth in the remedy section of this decision.

(e) Remit to the Unions dues that have been deducted from employees' earnings, with interest, as set forth in the remedy section of this decision.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix"[6] to all unit employees who were employed by the Respondent at the time that it closed or announced the closure of its Flint and Melvindale, Michigan facilities on December 11, 2001.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
MAILED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to mail and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

Choose not to engage in any of these protected activities.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT fail and refuse to bargain collectively and in good faith with Local 6-1001, Pace International Union, AFL–CIO and Local 6-0421, Pace International Union, AFL–CIO, as the exclusive collective-bargaining representatives for the units described below, concerning the effects on unit employees of our decision to close our Melvindale and Flint, Michigan facilities, and the resulting layoff and termination of the unit employees.

Unit 1: All full-time and regular part-time production and maintenance employees employed by us at our Melvindale facility; but excluding office clerical employees, sales employees, technical employees, professional employees, guards and supervisors as defined in the Act.

Unit 2: All full-time and regular part-time production and maintenance employees employed by us at our Flint facility; but excluding office clerical employees, sales employees, technical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL NOT fail to continue in effect all the terms and conditions of the collective-bargaining agreements by failing to pay, inter alia, holiday pay, vacation pay, and sickness and accident benefits.

WE WILL NOT fail to remit to the Unions dues that were deducted from the employees' paychecks pursuant to the terms and conditions of the collective-bargaining agreements.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, on request, bargain with the Unions over the effects on employees in units 1 and 2 of our decision to close our Melvindale and Flint, Michigan facilities, and to lay off and terminate the unit employees, and reduce to writing and sign any agreement reached as a result of such bargaining.

WE WILL pay the laid-off or terminated employees in both units 1 and 2 limited backpay in connection with our failure to bargain over the effects of our decision to close the Melvindale and Flint, Michigan facilities and to lay off and terminate employees, as required in the Decision and Order of the National Labor Relations Board.

WE WILL make the employees in both units 1 and 2 whole for any loss of earnings or other benefits by paying, among other things, the holiday pay, vacation pay, and sickness and accident benefits that have not been paid since December 11, 2001, with interest.

WE WILL make all the contractually required benefit fund contributions, if any, that have not been made on behalf of unit employees since December 11, 2001, and reimburse the employees in units 1 and 2 for any expenses ensuing from our failure to make the required contributions, with interest.

WE WILL remit to the Unions the dues that were deducted from employees' earnings, with interest.

LAIMBEER PACKAGING COMPANY, LLC